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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ELYSE R. EISENBERG,

Plaintiff and Respondent,

v.

REID STUART,

Defendant and Appellant.

A154908

(Contra Costa County
Super. Ct. No. N180997)

Reid Stuart appeals from a civil harassment restraining order prohibiting him from harassing Elyse Eisenberg and three of her associates. (Civ. Proc. Code § 527.6.)¹ The parties appear in propria persona, as they did below. Stuart contends that the order must be reversed because the trial judge was biased against him and the evidence shows that Eisenberg is not entitled to a restraining order. We affirm the order.

STATUTORY OVERVIEW AND STANDARD OF REVIEW

Section 527.6 was enacted “ ‘to protect the individual’s right to pursue safety, happiness and privacy’ ” by “providing expedited injunctive relief to victims of harassment.” (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412; *Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1227 (*Parisi*).) This statute “defines ‘harassment’ to include not just actual violence or threats of violence, but also ‘a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the

¹ Statutory references are to the Code of Civil Procedure, unless otherwise indicated.

person,’ that serves no legitimate purpose, and that is not constitutionally protected activity. To constitute harassment, the course of conduct ‘must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.’ (§ 527.6, subd. (b).)” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 (*R.D.*).)

To secure relief under section 527.6, a person may file a petition for an injunction prohibiting harassment. (§ 527.6, subd. (a).) The petitioner may obtain a temporary restraining order (TRO) “with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner.” (§ 527.6, subd. (d).) Prior to ruling on the injunction, the court must conduct a hearing pursuant to section 527.6, subdivision (i), which states: “At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.”

“We review issuance of a protective order for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence. [Citations.] ‘We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court’s findings. [Citation.] Declarations favoring the prevailing party’s contentions are deemed to establish the facts stated in the declarations, as well as all facts which may reasonably be inferred from the declarations; if there is a substantial conflict in the facts included in the competing declarations, the trial court’s determination of the controverted facts will not be disturbed on appeal.’ ” (*Parisi, supra*, 5 Cal.App.5th at p. 1226.)

FACTUAL AND PROCEDURAL BACKGROUND

I. The Petition Allegations and TRO

On May 9, 2018, Eisenberg filed a petition seeking protection from harassment by Stuart on behalf of herself and three individuals who work in her office. We will refer to

these individuals by their initials: M.C. is Eisenberg's business manager; V.G. is her practice manager; and S.A.S. is her colleague. Eisenberg and S.A.S., who are both in their 70's, are doctors who provide primary care, addiction treatment and psychiatric treatment to patients.

Eisenberg alleges that on May 4, 2018, Stuart showed up at her office in El Cerrito, frightened M.C., trespassed into other offices and made threats. She describes the incident and events that preceded it in a 5-page "statement" attached to her petition. According to Eisenberg's statement, in January 2018 Stuart was hired as a temporary office assistant at New Leaf Treatment Center in Lafayette, where Eisenberg and S.A.S. saw patients. At the time, New Leaf was in the process of closing, its Executive Director was traveling outside the country, and M.C. was on leave having surgery. Eisenberg had limited contact with Stuart, but two incidents concerned her. First, Stuart changed the combination on the office safe, which prevented staff from taking an inventory of prescription pads and medication. When Stuart was confronted about this, he claimed it was an accident. Second, while Stuart was helping to pack up the office, he took home items belonging to S.A.S., later claiming he was protecting them.

On February 3, 2018, Eisenberg and S.A.S. moved their practices to Eisenberg's El Cerrito office. The next day, Stuart sent Eisenberg a letter via email claiming that the building in El Cerrito made him sick and he would not go in it again. He asked for a computer, so he could work at home, and listed conditions he thought were environmental problems. He shared his list of concerns with Eisenberg's colleagues and employees and tried to convince them not to go to work either. After Eisenberg rejected Stuart's demands and disagreed with his complaints, Stuart filed for unemployment, but his request was denied on the ground that he was ineligible for benefits because he quit his job. Then Stuart began calling and emailing Eisenberg, commanding that she tell "EDD" (the California Employment Development Department) that he did not quit and directing her to make statements to "back him up." Stuart conveyed his anger and accused Eisenberg of retaliating against him. Eisenberg denied Stuart's accusations and

told him she would not lie for him. At some point, Stuart started texting M.C., ignoring requests to stop.

On the morning of May 4, 2018, Stuart snuck into Eisenberg's building before working hours, surprising the building manager. Stuart claimed he was a walk-in patient, but the manager made him leave. Later that day, Stuart returned to Eisenberg's office, "barged" into the reception area and frightened M.C., who suffers from multiple sclerosis. Eisenberg had not yet arrived at work, but M.C. later told her that Stuart "leaned and hovered over her, glared at her angrily, and left her shaking with fear." He told M.C. that he would keep coming after Eisenberg until he got what he wanted, and then went into Eisenberg's private office.

In her statement, Eisenberg recounted a phone call that she received from M.C. while Stuart was in their office on May 4. M.C. sounded terrified and did not know what to do. Eisenberg, who was on her way into the office, instructed M.C. to tell Stuart to leave. Then Eisenberg called the police. She was frightened that Stuart showed up at her office, and upset that he scared M.C. and caused a disturbance in front of her patients. She arrived at her office just as Stuart was leaving the building. From her car, she saw Stuart walk away, but then return and walk back and forth before disappearing up the street. A police officer arrived, but he could not locate Stuart. The officer talked to Eisenberg about getting a restraining order. Later that day, the owner of Eisenberg's building notified her that a building inspector had come by on May 2 because somebody filed a complaint with the city about the condition of the building. The building owner sent Eisenberg some security video, which showed Stuart trespassing in the building and using his phone to record the interior without her permission.

As additional support for her petition, Eisenberg attached an unsigned letter that M.C. sent to her, which described M.C.'s May 4 encounter with Stuart. M.C. stated that she arrived at the building around noon to prepare Eisenberg's office for afternoon appointments. Shortly after 2:00, there were three patients in the reception area when M.C. noticed Stuart standing in the hallway. She was "terrified" to see him but tried not to show her fear because she was worried about how the patients would react. Initially,

she was so afraid that she “froze.” Then Stuart walked into Eisenberg’s private office, which frightened M.C. even more, but she went out to talk to him so she could get him out of the doctor’s office. She tried to be cordial and hide her fear. Stuart was angry and got very close to her face. He wanted to know whether Eisenberg was getting her mail, and he told M.C. he would “continue to approach and bother” Eisenberg until he got what he wanted. M.C. told Stuart he needed to talk the Director of New Leaf, who had hired him. Then Stuart “stormed out of the office mad.”

M.C. stated that she was frightened and worried by the May 4 incident. She became more afraid when she found out that Stuart had showed up earlier that day claiming to be a walk-in patient because he had told M.C. that he happened to be in the area and just decided to stop by. M.C. thought that Stuart could be stalking her and Eisenberg and she was so upset that she lost sleep, became “paranoid about everything,” de-activated her Facebook account to avoid unwanted communication and experienced a flare up of her multiple sclerosis symptoms.

In light of Eisenberg’s allegations and evidence, the trial court issued a TRO, which was served on Stuart along with a notice that a hearing would be held on May 29, 2018.

II. Stuart’s Response

Stuart filed a response to the petition, denying Eisenberg’s material allegations, and refusing to agree to the requested protection orders. Stuart delineated his reasons for “disagreeing” with Eisenberg in a seven-page Attachment to his response, which consisted of a “Rebuttal,” two “Addendum” and a “Conclusion.”²

Stuart’s rebuttal summarizes his factual position: First, he has always been friendly and appropriate with Eisenberg and the other individuals named in the petition. Second, none of these people told him to stop contacting them. Third, he “dropped by”

² Stuart’s response includes some inflammatory accusations against Eisenberg that have nothing to do with the present dispute. We will not repeat those accusations here. Nor do we consider the substance of exhibits attached to the response, which pertain to a Medical Board proceeding conducted in the 1990’s.

Eisenberg's El Cerrito office on May 4, but did not have an unpleasant interaction with M.C., commit a trespass, or make any threats.

Stuart's first addendum provides "commentary on inaccuracies" in M.C.'s May 6 letter. Stuart disputes that M.C. actually drafted the letter, denies that he went to Eisenberg's office building on the morning of May 4, and provides a very different version of his afternoon visit: When he arrived at the office, Stuart waited patiently for M.C. to complete a telephone conversation. He wandered around the office because he was bored and curious about how the office looked after assisting with the move. When M.C. came out in the hall to talk, Stuart asked if the office was a valid mailing address because his mail had been returned. M.C. gave him the address for Eisenberg's Santa Rosa office. Then they exchanged pleasantries. Stuart described his encounter with M.C. as a "relaxed, friendly, good-natured chat."

Stuart's second addendum responds to the statement Eisenberg attached to her petition. Stuart disputes Eisenberg's claim that he "barged" into her reception area on May 4 and then leaned over and glared at M.C. Stuart maintains that he "never set foot in Room 3, the reception area, on May 4," but "discreetly" waited outside Room 3 until M.C. came out to greet him. Stuart also disputes other contentions by Eisenberg, including that she called the police on May 4. He states that he has contacted the Richmond Police Department and they have no record that Eisenberg called.

In his response, Stuart admits that when he went to Eisenberg's office on May 4, he took pictures on his phone that he thought might be useful for his forthcoming lawsuit; he plans to sue Eisenberg "for falsely telling EDD that I quit my job." Stuart also admits telling other people that Eisenberg "sabotaged" his unemployment benefits to retaliate against him for reporting "a workplace health hazard in her office."

III. The Trial Court's Order

At the hearing on Eisenberg's petition, both parties appeared without counsel. Stuart wanted to use a court reporter, but Eisenberg refused to stipulate because she thought it was an unnecessary expense. Stuart told the court that his friend went to Eisenberg's office the week before the hearing to obtain her signature on a stipulation to

use a court reporter, but she refused to sign and then stole his document. Eisenberg told the court that she kept the stipulation so that her attorney could review it. Later that night, Stuart called Eisenberg's attorney and threatened that if she did not sign the stipulation he would accuse her of stealing it. After further discussion, the trial court made the following ruling: "Although, I do believe that parties need to stipulate, I understand the situation here. I will allow the court reporter to report, but I will order that Mr. Reid Stuart pay 100 percent of the court reporter's fees."

Turning to the merits of the petition, the court inquired whether the parties had additional information for the court to consider. Eisenberg asked that the protective order include her building landlord and anyone who worked with her. Stuart stated he did not think it was appropriate for Eisenberg to seek protection for people who were not in her household. The court stated that the request for an injunction would be limited to Eisenberg, M.C., S.A.S. and V.G.

Stuart stated that he had questions about the statement Eisenberg attached to her petition. First, he wanted the name, badge number and description of the police officer who came to Eisenberg's office and looked for him on May 4. Second, he wanted a description of the car Eisenberg drove that day and to know whether she had been alone when she arrived at her office just as Stuart was leaving. The court took oaths from the parties, and then expressed doubt about whether Stuart's queries were relevant. Stuart responded that he wanted to test the accuracy of Eisenberg's story. Then the court asked Eisenberg for a reply to Stuart's questions. Eisenberg said she did not take badge numbers but provided the names of two Richmond Police officers who she had talked to on separate occasions. Stuart then stated that he had nothing further to ask.

The court asked if Eisenberg had anything further. She stated that Stuart was caught on the building's security camera going into people's private offices, that she had a "jurat" supporting M.C.'s account of the May 4 encounter, and that she personally observed Stuart walking back and forth outside her building. The court inquired about the security video. Eisenberg responded that the building owner had videotaped Stuart in the building on May 4 and that she had a clip of the video on her computer.

The court asked Stuart what happened on May 4. Stuart stated that he did visit the building that day, but he did not sneak in that morning, and he did not actually go into Eisenberg's reception room, which he referred to as "room three." He also confirmed for the court that he had been hired to assist with an office move and that he no longer worked there.

The court asked again whether either party had anything more to say before it ruled. Eisenberg repeated that she had video, which showed Stuart going into what he was calling "room three," that she had a "sworn statement" from M.C., which established that Stuart went into Eisenberg's private office while M.C. was on the phone telling Eisenberg that he was there, and that she called the police to have Stuart removed. The court reiterated that it had read the motion papers.

Stuart stated that he did not have anything further to add, but if the court reviewed "the movie," it would show that "the time frame was approximately two minutes before I [signaled] the office manger when she moseyed on out into the hallway to talk to me." Eisenberg responded that M.C. did not mosey out into the hall. Her "best recollection" was that M.C. told her Stuart leaned over the reception desk, put his face close to M.C.'s face and glared at her, and said he would not stop bothering her until he got what he wanted from Eisenberg. Then he went into Eisenberg's private office, so M.C. went after him to remove him.

After the matter was submitted, the court ruled that it would grant Eisenberg's petition and issue a three-year restraining order protecting Eisenberg, M.C., V.G. and S.A.S. The court also imposed a stay-away order requiring Stuart to stay at least 100 yards away from Eisenberg and the three protected persons, as well as Eisenberg's home, job, workplace, school and vehicle. Eisenberg was instructed to file the order, and Stuart was advised that he could obtain a copy after it was filed.

At the end of the hearing, Stuart asked whether the court was required to "write a decision explaining this interesting verdict." He stated: "This is a very curious decision you're making. So I'm curious, are you required to write a decision explaining why you're making this decision?" The court responded that it was not required to "make any

type of an opinion as to why I granted a restraining order.” Then Stuart asked again if the court was “legally required to explain or justify this curious decision.” The court responded: “It’s not a curious decision if there is evidence, and I am holding that there is evidence. That will be the Court’s order. Thank you, sir. You can step aside.” When Stuart attempted to prolong the discussion, the bailiff intervened.

DISCUSSION

Stuart contends that the civil harassment restraining order must be reversed because the trial court was biased against him and failed to undertake a proper evaluation of the evidence. Because Stuart’s appellate briefs contain no legal analysis, we are not required to consider his arguments at all but could simply deem them waived. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119–1120; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384.) Nevertheless, we will consider whether Stuart’s arguments have merit, bearing in mind that Stuart has the burden, as the appellant, of overcoming a presumption that the judgment is correct by affirmatively demonstrating prejudicial error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)³

In considering Stuart’s claim that the trial judge was biased against him, we are guided by the following principles: “The trial judge should be judicial, impartial and open-minded with respect to the issues, evidence, parties, witnesses, and counsel; the judge’s manner should be temperate and courteous. Conduct that does not meet these standards may call for a mistrial, the granting of a new trial, or reversal on appeal.” (7 Witkin, California Procedure (5th ed. 2008) Trial, § 242, p. 294.) However, “ “[o]ur role . . . is not to determine whether the trial judge’s conduct left something to be desired, or even whether some comments would have been better left unsaid. Rather, we must determine whether the judge’s behavior was so prejudicial that it denied [the party] a fair,

³ Stuart’s status as a pro per litigant does not exempt him from the rules of appellate procedure or relieve his burden on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) We afford pro per litigants “ ‘the same but no greater consideration than other litigants and attorneys.’ ” (*Ibid.*)

as opposed to a perfect” ’ ’ hearing. (*Arave v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (2018) 19 Cal.App.5th 525, 536–537.)

Stuart argues that the trial court’s bias against him was apparent from the very beginning of the hearing when Stuart displayed a superior knowledge of the law that gives him a right to use a court reporter even without a stipulation from Eisenberg. He further contends that the court’s ignorance about this routine matter required it to waste so much time that it did not have enough time to conduct a meaningful review of the parties’ evidence. We reject this argument as unfounded. First, Stuart himself filed a request for an order to use a court reporter pursuant to the parties’ stipulation, thus putting this matter directly at issue. Second, the discussion of Stuart’s attempt to secure a stipulation prior to the hearing was not a waste of time because that exercise assisted the court in evaluating Stuart’s demeanor and credibility. Third, the court *did* allow Stuart to use a court reporter. And finally, at the end of the hearing, before the court ruled on the petition, it stated that it had “read and reviewed all documentation from both sides, which is extensive and very detailed.”

By separate argument, Stuart disputes the court’s representation that it read the court file. He reasons that there simply was not sufficient time to adequately review the complex evidence in this case and that if the court had read his evidence, it would have denied Eisenberg’s petition. This indirect challenge to the sufficiency of the evidence ignores our standard of review. As the appellant, Stuart has the burden of proving that the court’s finding of unlawful harassment is not supported by substantial evidence in the record. He cannot make that showing here. The statutory definition of harassment is not limited to actual violence or threats of violence, but also includes a willful course of conduct that seriously alarms, annoys, or harasses a specific person. (§ 527.6, subd. (b); *R.D., supra*, 202 Cal.App.4th at p. 188.) The evidence attached to Eisenberg’s petition as well as Stuart’s conduct at the hearing supports the trial court’s conclusion that Stuart had been harassing Eisenberg.

Stuart next contends that the trial court exhibited bias by excluding evidence of the building security video that Eisenberg discussed in her petition and at the hearing.

According to Stuart, this “critically important evidence” would have proven that Eisenberg lied by claiming that Stuart went into the reception area on May 4, when he interacted with M.C. “Generally, ‘the trial court has the power to rule on the admissibility of evidence, exclude proffered evidence that is deemed to be irrelevant, prejudicial or cumulative and expedite proceedings which, in the court’s view, are dragging on too long without significantly aiding the trier of fact.’ [Citation.] Nonetheless, in exercising this power, the trial court may not infringe the parties’ ‘fundamental right to a full and fair hearing.’ ” (*Hernandez v. Kieferle* (2011) 200 Cal.App.4th 419, 438.) Here, Stuart ignores relevant facts, which indicate that the trial court did not infringe any fundamental right by concluding that it was unnecessary to look at Eisenberg’s video clip.

First, the video belonged to Eisenberg not Stuart, and neither party moved to admit it into evidence. Thus, the court did not actually make an evidentiary ruling regarding the video that is subject to challenge on appeal. Second, Eisenberg told the court that the video showed that Stuart went into offices without permission and took video on his phone. Stuart admitted he did just that. Thus, the court could have reached the reasonable conclusion that viewing the video would not have had a material effect on the outcome of these proceedings. Third, because the video is not part of the record, Stuart’s speculation about what it contains is insufficient to overcome the presumption of correctness attendant to the court’s order. Moreover, even if we were to indulge that speculation, it would not change our conclusion. Stuart’s May 4 encounter with M.C. was part of a pattern of conduct that was established by the evidence. Uncertainty about whether Stuart frightened M.C. in the reception room or in the hallway is not a material discrepancy. We simply disagree with Stuart that this collateral matter should dictate the outcome of this proceeding.⁴

⁴ As an alternative to his argument that the video clip was crucially relevant, Stuart posits that there was no video. Under this alternative version of the facts, Eisenberg and the trial judge had an *ex parte* discussion prior to the hearing and agreed

Taking another jab at the trial judge, Stuart contends that the court failed to probe the veracity of Eisenberg's claims. There are two parts to this argument. First, Stuart posits that the judge should have contacted the Richmond police department because they would have verified Stuart's assertion that Eisenberg did not call the police on May 4, 2018. However, that type of collateral investigation was not permissible because a trial judge in a non-jury proceeding may not receive evidence outside the record. (*Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100, 109.) Second, Stuart argues that the court should have expressed skepticism about an accusation in the statement Eisenberg attached to her petition that Stuart "behaves like someone who is delusional, may be bipolar with psychotic thinking, and who may be dangerous." Stuart contends that the trial judge's failure to explicitly challenge Eisenberg on this point proves that the judge was either biased or did not actually read Eisenberg's statement. This argument is another red herring. The issue before the trial court was whether there was sufficient evidence of civil harassment, not whether Stuart suffers from mental illness.

Stuart contends that when taken together, the shortcomings he attributes to the trial court demonstrate "extreme bias and judicial misconduct." We disagree. It is the duty of the trial judge sitting as the trier of fact " 'to consider and pass upon the evidence produced before [her], and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party. The opinion thus formed, being the result of a judicial hearing, does not amount to [improper] bias and prejudice.' " (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219–1220.)

For all these reasons, we conclude that the trial court did not commit misconduct or abuse its discretion by granting the restraining order under the facts presented.

DISPOSITION

The May 29, 2018, order is affirmed.

that Eisenberg would pretend to have a video, but the court would refuse to look at it. Nothing in the record supports this wild accusation.

TUCHER, J.

WE CONCUR:

STREETER, Acting P. J.

BROWN, J.